



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 8, 51, and 52

[FAR Case 2022-007; Docket No. FAR-2022-0004, Sequence No. 1]

RIN 9000-AO44

Federal Acquisition Regulation: Removal of FAR Subpart 8.5, Acquisition of Helium

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the statutory expiration of the Federal Helium System in accordance with the Helium Stewardship Act of 2013.

DATES: Interested parties should submit comments to the Regulatory Secretariat Division at the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]** to be considered in the formulation of a final rule.

ADDRESSES: Submit comments in response to FAR Case 2022-007 to <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case

2022-007". Select the link "Comment Now" that corresponds with "FAR Case 2022-007." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2022-007" on your attached document.

If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Instructions: Please submit comments only and cite "FAR Case 2022-007" in all correspondence related to this case.

All comments received will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 or by email at michaelo.jackson@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAR Case 2022-007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement the final disposition of the Federal Helium

System in accordance with the Helium Stewardship Act of 2013 (Pub. L. 113-40), which required the disposal of the Federal Helium System by September 30, 2021. The Act required the Department of the Interior (DOI), through the Director of the Bureau of Land Management (BLM), to begin offering helium for auction or sale on an annual basis. Under the Federal In-Kind Program, Federal agencies are required to purchase all of their refined helium from private suppliers who, in turn, are required to purchase an equivalent amount of crude helium from the Federal Helium Reserve.

On April 16, 2020, the BLM announced the process and timeline for disposal of the remaining helium and helium assets to meet the September 30, 2021, statutory deadline. Excess helium and helium assets remaining after September 30, 2021, were transferred to GSA, in accordance with the statutory disposal process. Federal In-Kind users have access to helium until September 30, 2022, while GSA completes the disposal process; afterward, Federal In-Kind users will be required to seek new sources of helium on the open market.

DoD, GSA, and NASA understand that DOI plans to remove the Federal Helium Program requirements from 43 CFR part 3195.

II. Discussion and Analysis

This rule proposes to delete FAR subpart 8.5,

Acquisition of Helium, and the contract clause at FAR 52.208-8, Required Sources for Helium and Helium Usage Data, in their entirety. The direction is no longer needed in the FAR because the Government's operation of the Federal Helium System ended as of September 30, 2021, and access to the Federal In-Kind Program will end on September 30, 2022. As a result, Federal agencies will be able to procure helium on the open market.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This rule removes FAR clause 52.208-8, Required Sources for Helium and Helium Usage Data; FAR subpart 8.5, Acquisition of Helium; and other associated language in FAR parts 1, 8, and 51. This rule does not impose any new requirements on contracts at or below the simplified acquisition threshold, for commercial products including commercially available off-the-shelf items, or for commercial services.

IV. Expected Impact of the Rule

This proposed rule is not expected to have a significant impact on the Government or industry because the operation of the Federal Helium Reserve ceased on September 30, 2021, and agencies were notified that the Federal In-Kind Program would end on September 30, 2022.

Agencies will be able to procure helium on the open market as they do for other requirements.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not anticipated to be a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the "Submission of Federal Rules Under the Congressional Review Act" form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612, because the rule removes the procedures and reporting requirements for the procurement of helium. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the statutory expiration of the Federal Helium System in accordance with the Helium Stewardship Act of 2013 (Pub. L. 113-40). The Helium Stewardship Act required the disposal of the Federal Helium System by September 30, 2021. The Federal In-Kind Program will end a year later, on September 30, 2022. The Department of the Interior, Bureau of Land Management, announced on April 16, 2020, the process and timeline for disposal of the remaining helium and helium assets.

The objective of the rule is to remove the Federal Helium System requirements from the FAR to comply with the statutory direction. The legal basis for the rule is the Helium Stewardship Act of 2013.

This rule applies to all solicitations and contracts for the procurement of helium. The rule removes all of the procedures and reporting requirements associated with helium procurements currently in the FAR. The rule is not expected to impact a significant number of entities.

According to data from the Bureau of Land Management, there were approximately 7 remaining entities participating in the Federal In-Kind Program in calendar year 2020. Data obtained from the System for Award Management as of June 14, 2022, indicates that none of those 7 entities are small.

The proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities. Rather, this rule removes current reporting and compliance requirements for small entities.

DoD, GSA, and NASA understand that DOI plans to remove the Federal Helium Program requirements from 43 CFR part 3195.

There are no available alternatives to the proposed rule to accomplish the desired objective.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2022-007), in correspondence.

VIII. Paperwork Reduction Act

This rule removes the information collection requirements associated with the clause at FAR 52.208-8, Required Sources for Helium and Helium Usage Data, currently approved under OMB Control Number 9000-0113, entitled "Acquisition of Helium". Accordingly, GSA submitted, and OMB approved, the following reduction of the annual reporting burden and OMB inventory of hours under OMB Control Number 9000-0113 as follows:

Respondents: 26.

Responses per respondent: 1.

Total annual responses: 26.

Hours per response: 1.

Total response burden hours: 26.

List of Subjects in 48 CFR Parts 1, 8, 51, and 52

Government procurement.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 8, 51, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 8, 51, and 52 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. In section 1.106 amend the table by removing FAR segment "8.5" and the corresponding OMB Control Number "9000-0113".

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.003 [Amended]

3. Amend section 8.003 by removing paragraph (e).

Subpart 8.5 [Removed and Reserved]

4. Remove and reserve subpart 8.5, consisting of sections 8.500 through 8.505.

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.102 [Amended]

5. Amend section 51.102 by—

- a. Removing from the end of paragraph (c) (3) "20420;" and adding "20420; or" in its place;
- b. Removing paragraph (c) (4);
- c. Redesignating paragraph (c) (5) as paragraph (c) (4);

d. Removing from the newly redesignated paragraph (c) (4) the words "(1) through (4) above" and adding the words "paragraphs (c) (1) through (3) of this section" in its place;

e. Removing from the end of paragraph (e) (3) (i) the word "DoD;" and adding the words "DoD; and" in its place;

f. Removing from the end of paragraph (e) (3) (ii) the word "and"; and

g. Removing paragraph (e) (3) (iii).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208-8 [Removed and Reserved]

6. Remove and reserve section 52.208-8.

[FR Doc. 2022-19642 Filed: 9/16/2022 8:45 am; Publication Date: 9/19/2022]